UNITED STATES OF AMERICA)	
)	Government ex parte Motion for
v.)	Authorization of a Redaction of
)	Material within One Department of
Manning, Bradley E.)	Homeland Security Document under
PFC, U.S. Army,)	RCM 701(g)(2)
HHC, U.S. Army Garrison,)	
Joint Base Myer-Henderson Hall)	14 September 2012
Fort Myer, Virginia 22211)	

RELIEF SOUGHT

COMES NOW the United States of America, by and through undersigned counsel, and respectfully requests this Court: (1) consider this motion in camera and ex parte under Rule for Courts Martial (RCM) 701(g)(2); and (2) authorize a redaction of material within one Department of Homeland Security (DHS) document under RCM 701(g)(2) that is neither favorable to the accused and material to guilt or punishment, nor relevant and necessary for production under RCM 703(f).

BURDEN OF PERSUASION AND BURDEN OF PROOF

As the moving party, the prosecution has the burden of persuasion on any factual issue the resolution of which is necessary to decide the motion. See RCM 905(c)(2). The burden of proof is by a preponderance of the evidence. See RCM 905(c)(1).

FACTS

On 25 July 2012, the prosecution requested leave of the Court until 14 September 2012 to complete its search of DHS records and to disclose any DHS records which contain discoverable material. See Appellate Exhibit (AE) CCXXVI.

On 26 July 2012, the Court ordered the prosecution to file a supplemental pleading stating with particularity the efforts required to obtain the requested information. The prosecution filed its supplement on 31 July 2012. See AE CCXXVIII.

On 1 August 2012, the Court granted the prosecution's request for leave until 14 September 2012 to search for, and disclose, any discoverable DHS documents to the defense or to the Court under RCM 701(g)(2) or MRE 505(g)(2). See AE CCXXX.

On 14 September 2012, the prosecution disclosed 44 documents owned by DHS.

As of 14 September 2012, the prosecution has provided the defense, or made available for inspection by the defense, all discoverable documents owned by DHS, except for the one document that is the subject of this motion.

WITNESSES/EVIDENCE

The prosecution does not request any witnesses or evidence be produced for this motion. The prosecution requests that the Court consider the enclosure listed at the end of this motion.

LEGAL AUTHORITY AND ARGUMENT

RCM 701(g)(2) states that "[u]pon a sufficient showing the military judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate." RCM 701(g)(2). The rule continues that "[u]pon motion by a party, the military judge may permit the party to make such showing, in whole or in part, in writing to be inspected only by the military judge." <u>Id.</u>; see also AE XXX ("RCM 701(g)(2) does authorize the Court to allow ex parte showings by either party when moving the Court to restrict or limit discovery"); <u>United States v. Abrams</u>, 50 M.J. 361, 363 (C.A.A.F. 1999) (under RCM 701(g)(2), "the military judge has such tools as in camera reviews, and protective or modifying orders at his disposal").

The proposed redacted information is neither favorable to the accused and material to guilt or punishment, nor relevant and necessary for production. See Brady v. Maryland, 373 U.S. 83 (1963); RCM 701(a)(6); RCM 703(f).

The proposed redaction is shaded in grey on the enclosed document. See Enclosure. Though unclassified, the redaction is necessary (b) (1) (A)

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The prosecution will not use the redacted information during any portion of the trial.

CONCLUSION

The prosecution respectfully requests this Court: (1) consider this motion in camera and ex parte under RCM 701(g)(2); and (2) authorize a redaction of material within one DHS document under RCM 701(g)(2) that is neither favorable to the accused and material to guilt or punishment, nor relevant and necessary for production under RCM 703(f).

J. HUNTER WHYTE

CPT, JA

Assistant Trial Counsel

Enclosure

Department of Homeland Security Document